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FRAUDS IN THE MAIL.*

FRAUD ORDERS AND THEIR PURPOSES.

BY HON. GEORGE B. CORTELYOU.

LEGISLATION in the Congress of the United States, looking to the exclusion from the mails of all matter relating to lotteries or other schemes to defraud, began in 1868. The laws under which the Post-Office Department operates at present are the acts of 1890 and of 1895.

These statutes provide for the issuance by the Postmaster-General of what are commonly known as "fraud orders." The orders are special directions to postmasters, and have for their object the suppression of fraudulent schemes and lotteries so far as the enterprises are conducted by means of the United States mails. The effect of the fraud order is to prevent the further delivery of mail matter and the payment of money-orders to the person or concern against whom the order is directed, and to cause the return to the senders of all such mail matter and money-orders.

Few governmental functions exercised by the great Executive Departments at Washington operate so widely or generally to conserve the interests of all classes of citizens, or so directly and effectively to discourage dishonest practices.

Upon evidence of fraudulent design satisfactory to the Postmaster-General, the postmaster to whom the order is addressed

* This article was prepared by the Hon. George B. Cortelyou, Secretary of the Treasury, some months ago, while he was Postmaster-General. It was withheld from publication at the time, because a measure was introduced in Congress tending to deprive the Department of the force of its authority in fraud orders, and Mr. Cortelyou did not desire to make public comment upon the subject while the legislation was pending. The matter was abandoned by the Congress only at the very last of the session, at which time Mr. Cortelyou left the Post-office Department to become Secretary of the Treasury.—ED. N. A. R.

is directed to withhold from delivery all mail matter arriving at his post-office for the person or company named, and to return the same to the sender, the outside plainly marked "Fraudulent." For this evidence of the unlawful nature of any scheme whose practices are called to his attention, the Postmaster - General relies, first, upon the result of investigations made by the sworn inspectors of the Department. These officers are assigned to various sections of the country, and a part of their duty is to investigate all cases in their districts in which it is alleged that the mails are being used in violation of the law. They report the facts as they find them to the Assistant Attorney-General for the Post-Office Department; and if these facts establish a *prima facie* case of fraud, the person or concern involved is at once notified of the pendency and of the nature of the charges brought, and is then afforded an opportunity to appear before the Assistant Attorney-General for the Post-Office Department, either in person or in writing, or both, making such answers and statements as it may be desired to have the Department consider in disposing of the matter. After careful investigation and hearing of all sides, if the Assistant Attorney-General is of the opinion that a fraud order should be issued, he makes a full report of the case to the Postmaster-General, by whom the final review and action must be taken.

When the character of the scheme to defraud is such that its continued operation, during this examination and consideration of the charges, threatens to result in losses to the public, temporary orders are at once issued to the postmaster simply to withhold the mail, pending the inquiry. No publicity is given to this fact. If the charges are dismissed, the mail is at once released. It is only after the regular fraud order is issued that the accumulated mail is marked "Fraudulent" and returned to the senders.

It is sometimes found that legitimate business enterprises have been so advertised and conducted as to mislead the public, without any real intention to defraud. In response to complaints received, steps are immediately taken to inquire into the methods and operations thus called in question. When they develop the fact that the advertisements or misleading statements were not deliberately designed to defraud and that the business is not otherwise open to serious criticism, the opportunity is given to

discontinue the objectionable features, and the business is allowed to proceed undisturbed.

Sometimes complaints are received by the Department against well-established and highly reputable mercantile houses engaged in transacting through the mails a business the integrity of which is wholly above question. Upon such complaints being investigated, it usually develops that misunderstandings occurred through delays in shipment, loss in transit or some other cause easily accounted for and explained, giving the Department an opportunity to act as peacemaker and adjust the difficulty.

The prime object of the present law is to secure summary action which shall put immediate stop to fraudulent schemes, for the protection of the public. Obviously, the value of the relief to be secured by the public through any law upon this subject depends largely upon the promptness with which the scheme to defraud may be denied the use of the mails to further its questionable purposes. If the action against it were to be materially delayed, or delayed for any appreciable time, the scheme could run its fraudulent course or transfer its affairs to other names and destinations before it could be obstructed by official interference.

For this very reason, the power conferred upon the Postmaster-General by the statutes of 1890 and 1895 has been criticised by some—chiefly by those who have been hampered in nefarious undertakings through the issuance of fraud orders. It is little wonder that to this class the authority of the Postmaster-General under the existing law seems autocratic and tyrannical.

These critics have succeeded in producing sufficient agitation to secure the presentation of a bill in Congress, the effect of which would be to deprive the existing law of its chief value. The point of the proposed legislation is that a fraud order shall not complete its effectiveness till the expiration of fifteen days after the object of the order has received notice of its issuance, during which time he is granted the right to file a bill in the United States Circuit Court—with the usual right of appeal from whatever its finding may be—transferring the disposition of his mail from the Post-Office to the Court, pending the final decision.

Possibly, some of the misleading arguments—by those who have already proved themselves experts in framing misleading advertisements—may have reached the public as well as the legislative ear, creating some uncertainty as to the intent and

comparative benefit of the present statutes. If so, a single instance will suffice to indicate that the very feature which renders the present law objectionable to some is, in truth, the cause of its real value to the public—the authority it confers for summary and imperative deprivation of the use of the mails in carrying on fraudulent schemes, when the scheme itself is proven to be undoubtedly fraudulent, irrespective of the ability of the promoter to escape a criminal conviction.

A fraud order was issued in October, 1901, against an offender at Seabreeze, Florida. Subsequently, this person was indicted on the charge of using the United States mails in the conduct of a scheme to defraud. Upon a technicality, the indictment was quashed in March, 1902. In June of that year, and in February of 1903, other indictments were found; and upon a technicality these indictments were also quashed in June, 1903. Again this offender was indicted in February, 1904, and was tried and convicted. An appeal was taken, and a new trial was ordered. In February, 1906, the new trial was followed by conviction and sentence; but another appeal was taken which is still pending. By the prompt issuance of the fraud order, thousands of dollars were saved to the public. If it could not have been issued, the fraudulent enterprise would undoubtedly be still in operation, while the delay incident to a criminal prosecution for the same offence is indicated by the fact that, five years after the indictment, the case against the offender is still pending.

In administering the present law the Department has been so consistently reasonable that there is little apparent occasion for recourse to the courts. There is no opposition on the part of the Department to such an amendment as will give court review, if it does not deprive the Department of its present immediate effectiveness and therefore of its entire usefulness in this means of public protection. There can be no objection to every man having the right of appeal to the courts against any possible or apparent injustice; but to carry that right so far as to take away the force of the order, to vitiate its effectiveness, or remove the matter from the jurisdiction of the Department during court review, would obviously render the position of the Department unreasonably embarrassing; as by law it would be expected to protect the public while handicapped by an amendment rendering it powerless to do so.

The present statutes overcome conditions with which the ordinary machinery of the law is inadequate to deal. The convenient and almost necessary facility of communication afforded by the Post-Office Department and the freedom of communication from inspection obviously lay the service open to grave abuse. Without this authority which enables the Postmaster-General to act quickly and effectively when unlawful use of mails is established, the public would be constantly at the mercy of hordes of rascals who have become expert inventors and promoters of devices to defraud.

It is not the law, but the law's delay, which the operators of fraudulent methods would be glad to obtain. For it must be borne in mind that many, if not most, of the schemes to defraud are of the fly-by-night order; of the kind whose methods and base of operations are constantly changing; who shift from name to name and city to city, for the express purpose of avoiding too close scrutiny; who are often hard to locate for the deeds of the present and harder to convict for the deeds of the past.

In New York, recently, a dozen different names were successively used by one concern, a change being made immediately on the discovery that it was attracting attention—made for the express purpose of escaping the detrimental effect of a fraud order. This plan would obviously be much more successful if the restriction came from the slowly moving courts.

It is particularly true, too, that comparatively little direct evidence can be brought into court against the majority of these fraudulent operators. Their victims are people of small means, residing at remote distances, whose individual losses are too small to justify the expense incident to legal prosecution. The evidence of fraud gathered by the sworn inspectors and admitted by the person or concern in the preliminary hearing may be indisputable, and without question it may justify the Postmaster-General, under the statutes which give him his authority, in acting immediately and effectively to prevent further operations of the concern by forbidding the offender the use of the mails, while he could not, nevertheless, produce in court a sufficient amount of admissible evidence to insure the conviction of the operator of the scheme.

There are numerous instances illustrative of this constantly coming before the Department. Take, for example, the follow-

ing: The Reliable Blue Company, of New York, advertised to give away a "new automatic tension sewing-machine," all charges prepaid, "to all persons who would sell thirty packages of Washing Blue, at ten cents each, and remit the three dollars collected therefor. The offer contained the cut of a machine, and naturally led the reader to suppose it represented the one to be sent; while, as a matter of fact, the machine given was a toy, very small and of no practical value. Following is the reply of the company to a complaining patron. It illustrates the complication of difficulties above referred to:

"DEAR MADAM,—We have your letter and would advise you to keep cool and not make any rash statements before you are sure as to what you are saying.

"You seem to think we agreed to send you an up-to-date, high-grade sewing-machine with all the latest attachments. If you can show us in our advertisement where we made such agreement, we will send you such a sewing-machine.

"We will refer you to our advertisement, which evidently you did not read carefully, or you would not have cried out 'Fraud,' just as if we were some common, cheap concern that was trying to defraud people. We cannot understand how a lady, who seems to possess the intelligence that you do, could understand the advertisement in any other way than the way it was intended.

"You will notice the first word in the advertisement is 'Free!' That means that something is given away, and appears in the advertisement to attract the reader's attention. Then we say, 'An up-to-date, high-grade sewing-machine, with all the latest attachments, costs from \$30 to \$40.' You know very well that this is true in any store, no matter where you went to buy it. To show you the kind of a machine that would cost you the sum we have mentioned, we show a picture of such a machine. You see it thus far, do you not? But not a word yet have we said about giving away such a machine free. We next say, 'Don't throw your money away.' This is good advice, as you must admit. We then go on to say in the advertisement, 'But take advantage of our generous proposition,' and then you are ready to see what the proposition is. You will then find in the next words in the advertisement a distinct proposition and agreement as follows: 'If you wish to own a sewing-machine that will do excellent sewing, send us your name and address at once, and agree to sell only thirty packages of our Washing Blue at ten cents a package.' Then we say further, 'When sold send us the money, \$3, and we will promptly forward to you our new Automatic Tension Sewing-machine.'

"Now that is the only agreement we made, and we carried it out to the letter. We hope you will sit down and write us a letter and apologize for insinuating that our object was fraud. You have hurt

our feelings very much. We did not ask you to pay us a cent out of your own pocket. We only asked you to sell our Blue, which you did, and we appreciate it. The money from the sale of the Blue was ours, and you could do nothing else but return it to us as you did. The work you did was worth a commission of twenty-five per cent., or seventy-five cents. We sent you a premium that would cost you in any store \$1.50. Many ladies who don't care for it for themselves give it to their daughters, niece, or cousin or sister.

" You don't mean to sit down and tell us that you, with your good sense, would suppose that we, or any one else, could afford to give away a forty-dollar sewing-machine for the simple little work of selling \$3 worth of goods for us, do you?

" Furthermore, we would like to tell you that we are a large and reliable concern, and that we would not think of inserting an advertisement in any paper without first obtaining the best legal opinion that money could buy in this State of New York. Our advertisement is perfectly honorable and plain to those who read it carefully. We would advise you not to answer any advertisement again until you are absolutely sure that you understand it. We are sorry you were disappointed, but you would not have been if you had read it carefully at first."

The difficulties are apparent which would lie in the way of securing a speedy conviction of the perpetrators of this fraud as individual criminals, but no one will question the justice of the summary and effective fraud order which put a stop to the scheme, and surely saved a great many more from being disappointed aspirants for a high-grade sewing-machine.

If the Postmaster-General were confined to such evidence as would be admissible in a court of law, and first forced to prove the promoter a criminal, it is easy to see how it would nullify the entire benefit derived by the public through his present authority to act upon satisfactory evidence of every kind, collected by inspectors and presented by the accused, tending to prove or disprove the complaints.

It recently occurred in New York that apparently several concerns were offering, to people in Canada and other remote places, building lots represented to be located in fashionable and desirable suburbs of the city. On investigation, they proved to be waste land on Long Island, practically without value for any purpose. No one seeing the lots and knowing the conditions could have been induced to purchase them, hence a resort to the mails for distant victims. The courts could hardly have taken cognizance of a fraud before it was consummated; but the operations

were brought to an immediate end by means of a fraud order. Criminal prosecution for fraud must of course follow the consummation of the fraud, while the fraud order puts a stop to the scheme the moment its unlawful methods are discovered.

To enable the accomplishment of this check upon fraud in its inception, is the express design of the present statutes. The fraud order is not intended to be punitive. It is purely protective —to prevent the use of the mails for purposes of fraud against the public. Following the intent of the law, the entire effort of the Department is the suppression of fraudulent enterprises depending on the mails.

Since the enactment of the present legislation, over 2,400 fraud orders have been issued by the Department, but in less than thirty cases has the propriety of the order been challenged, and in none has the Court held that it was erroneous or unwarranted. In only two of the settled cases were injunctions allowed. One of these was upon a technicality as to whether there was a definite finding of the Postmaster-General that the business was actually in violation of law; and the other was upon questions of constitutionality, which have since been fully settled by the Supreme Court of the United States. So that the action of the Post-Office Department in all of the thirty disputed cases may be said to have been upheld by the courts.

This record is of very great importance in considering the advisability of withdrawing the power. It endorses the conservative administration of the law by the Post-Office Department, extending over the jurisdiction of many Postmasters-General, of different political parties. It emphatically fails to indicate any abuse of the power rendering a change in legislation advisable or desirable at this time.

On the other hand, the Department is occasionally and severely censured for *not* excluding from postal privileges certain other enterprises and classes which are necessarily left undisturbed. There are many who misconstrue the functions and powers of the Department, and expect it to do more under the present law than is reasonable or possible.

The Postmaster-General must not and cannot substitute opinion for evidence. In no case is the branding of a business as fraudulent, with the resultant exclusion of its correspondence and literature from the mails, justifiable except upon

complete and satisfactory evidence of its unlawful intentions. Frequently, enterprises are brought to his attention of whose fraudulent operations the Postmaster-General entertains little or no moral doubt, but which are so shrewdly and ingeniously conducted that it is a most difficult matter to pronounce upon them. This is particularly true of mining enterprises which, from time to time, are exploited through the mails, and which eventually prove to be fraudulent. It is often manifestly impossible for the Post-Office Department to determine with sufficient certainty whether mines in Alaska, Mexico and South America are, in fact, what they are represented to be. However, even in this line, the Department can point to many schemes which have been suppressed through its energy—notably the White Swan Mines Company and the Ubero Plantation Company.

Naturally, the largest and most important branch of the warfare which is being waged by the Department against abuses of the mailing privilege is represented in the issuance of fraud orders against devices whereby the credulous are deceived by promises of sudden gain or some other great benefit. But there are other essential lines in which the Department has directed its efforts toward purifying the mails. In the suppression of lotteries it has been of inestimable value to the country, as well as in the suppression of obscene and indecent literature; and during the past year it has effectually barred from certain offending newspapers in a number of our large cities advertisements of criminal establishments, the evil effects of whose debasing and illegal practices are of incalculable harm to our people.

It will be readily understood that the guarding of the mails for the purpose of keeping at the minimum the manifold abuses to which they are inherently subject is a task of great magnitude; but it is being better and more efficiently done every year, affording much justification for the remark, which was made not long ago, that "the Post-Office Department of the United States is the most effective agency in the world for the detection and prevention of crime and the apprehension of the criminal."

Much, indeed, which is not recorded in the issuance of fraud orders is accomplished under the same authority. Its watchfulness and initial action have often saved the Department the necessity of further steps.

The variety of devices for fraudulent practices through the

mails is infinite. Many of them are profoundly clever and ingenious, while others are so palpably dishonest that it is difficult to see how any ordinary mortal can be duped by them. The very depths of misguided ingenuity are sounded in efforts to obtain money and goods by fraud, but they always run to some extent in classes. It is rarely that a distinct type of fraud is confined to one person or group of persons exclusively. There seems to be as much fashion in fraud as in other things; and each fad, in turn, seems to find just as many waiting to be fooled. It is really the same mania which possesses the one who fools and the one who is fooled. Each wishes to get something for nothing, or next to nothing. So the schemes multiply and prosper—some of them phenomenally—until the Department steps in and, through the authority conferred by the statutes heretofore alluded to, exercises the proper and salutary control which finds effect in the so-called fraud order.

GEORGE B. CORTELYOU.